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Sincerely,

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**Enclosure.**  
**Factual and Legal Analysis**

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Representative Charles B. Rangel MUR 6435  
National Leadership PAC and David A. Paterson in his official capacity as  
treasurer  
Rangel for Congress and David A. Paterson in his official capacity as  
treasurer

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission (the "Commission") alleging violations of the Federal Election Campaign Act of 1971, as amended, (the "Act") by Representative Charles B. Rangel, the National Leadership PAC and David A. Paterson in his official capacity as treasurer, and Rangel for Congress and David A. Paterson in his official capacity as treasurer. *See* 52 U.S.C. § 30109 (formerly 2 U.S.C. § 437(a)(1)).<sup>1</sup>

**II. FACTUAL AND LEGAL ANALYSIS**

The complaint alleges that the National Leadership PAC ("NLP"), Representative Charles B. Rangel's leadership PAC, impermissibly paid \$393,000 for legal fees incurred by Rangel in connection with an investigation of his conduct by the U.S. House of Representatives Committee on Ethics ("House Ethics Committee"). The complaint alleges that these expenses should have been funded by Rangel or his principal campaign committee, Rangel for Congress ("RFC" or "Rangel Committee") — who had directly paid for additional legal fees totaling \$1,669,725 — and that NLP made unreported excessive in-kind contributions to RFC.<sup>2</sup>

<sup>1</sup> On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

<sup>2</sup> *See* 52 U.S.C. §§ 30116(a)(2)(A), (f) and 30104(b) (formerly 2 U.S.C. §§ 441a(a)(2)(A), 441a(f), and 434(b)).

**A. Background**

Congressman Charles B. Rangel represents New York's 15<sup>th</sup> Congressional District. Rangel for Congress is Rangel's principal campaign committee.<sup>3</sup> Rangel is also the sponsor of NLP, a multicandidate leadership PAC.<sup>4</sup>

On September 24, 2008, the House Ethics Committee established an investigative subcommittee as to whether Rangel violated the House's Code of Official Conduct or other law, regulation or standard of conduct applicable to the performance of his official duties.<sup>5</sup> The Statement of Alleged Violation contained thirteen counts relating to: Rangel's use of official resources to solicit and accept donations to the Rangel Center for Public Service at the City College of New York; his failure to pay taxes on a villa in the Dominican Republic; his failure to comply with House financial disclosure and administrative rules; and, his lease of a rent-stabilized apartment in the Lenox Terrace complex, which was jointly occupied by RFC and NLP for over 10 years ("Lenox Terrace matter").<sup>6</sup> On June 24, 2009, the House Ethics Committee also launched an inquiry into the sponsorship of travel costs for several members of

<sup>3</sup> See 52 U.S.C. §§ 30101(5), (6) and 30102(e)(1) (formerly 2 U.S.C. §§ 431(5) & (6) and 432(e)(1)).

<sup>4</sup> See NLP Amended Statement of Organization (July 9, 2014). A leadership PAC is a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate or an individual holding federal office, but is not an authorized committee of the candidate or officeholder and is not affiliated with an authorized committee of a candidate or officeholder. 52 U.S.C. § 30104(i)(8)(B) (formerly 2 U.S.C. § 434(i)(8)(B)), 11 C.F.R. § 100.5(e)(6); see also 11 C.F.R. § 100.5(g)(5). Generally, leadership PACs are formed by individuals who are Federal officeholders or candidates to raise funds that they in turn contribute "to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder's travel when campaigning for other Federal candidates. The monies may also be used to make contributions to party committees, including State party committees in key states, or donated to candidates for State and local office." Notice of Proposed Rulemaking on Leadership PACs, 67 Fed. Reg. 78,753, 78,754 (Dec. 26, 2002).

<sup>5</sup> See Statement of the Acting Chairman and Ranking Republican Member of the Committee on Standards of Official Conduct (Sept. 24, 2008), available at [http://ethics.house.gov/sites/ethics.house.gov/files/documents/Press\\_Statement\\_Rangel\\_2008.pdf](http://ethics.house.gov/sites/ethics.house.gov/files/documents/Press_Statement_Rangel_2008.pdf).

<sup>6</sup> See Report in the Matter of Charles B. Rangel (Nov. 29, 2010) ("Committee Report"), Attachment II: Statement of Alleged Violation ("Statement of Alleged Violation"), available at <http://ethics.house.gov/committee-report/matter-representative-charles-b-rangel>.

1 Congress, including Rangel, to Carib News Foundation Business Conferences in Antigua in 2007  
2 and St. Maarten in 2008.<sup>7</sup> On October 8, 2009, the House Ethics Committee voted to expand the  
3 jurisdiction of the investigative subcommittee's inquiry to include an examination of Rangel's  
4 2009 Financial Disclosure Statements.<sup>8</sup> The House Ethics Committee's 21-month investigation  
5 involved formal interviews of 41 witnesses, informal interviews of other witnesses, the review of  
6 28,000 documents, and 60 investigative subcommittee meetings. At least six of these interviews  
7 were in connection with the Lenox Terrace matter, including two interviews with RFC and NLP  
8 staff.<sup>9</sup> On February 25, 2010, the House Ethics Committee publicly admonished Rangel for  
9 violating the House gift rule by accepting payment of reimbursement to the Carib News  
10 conferences in 2007 and 2008.<sup>10</sup> On December 2, 2010, the U.S. House of Representatives voted  
11 to censure Representative Rangel for eleven violations of the House Ethics rules, including his  
12 lease of the rent-stabilized apartment that RFC shared with NLP.<sup>11</sup>

13 In addition to these formal proceedings, according to respondents, the Justice Department  
14 also had initiated an investigation of Carib News pursuant to a referral by the Ethics  
15 Committee.<sup>12</sup> Though Rangel, NLP and RFC were reportedly not targets in that investigation,

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<sup>7</sup> See Report on Investigation Into Officially Connected Travel of House Members to Attend the Carib News Foundation Multi-National Business Conferences in 2007 and 2008 (Feb. 25, 2010) ("Carib News Report"), available at <http://ethics.house.gov/sites/ethics.house.gov/files/documents/Carib%20News%20Report%20Vol.%201.pdf>.

<sup>8</sup> See Statement of the Acting Chairman and Ranking Republican Member of the Committee on Standards of Official Conduct (Oct. 8, 2009), available at [http://ethics.house.gov/sites/ethics.house.gov/files/documents/Rangel\\_Press\\_Statement\\_Oct\\_8\\_2009.PDF](http://ethics.house.gov/sites/ethics.house.gov/files/documents/Rangel_Press_Statement_Oct_8_2009.PDF).

<sup>9</sup> See Committee Report, at Appendix B and Exhibits Parts 11 and 12.

<sup>10</sup> See Carib News Report at IV-V.

<sup>11</sup> See H.R. Res. 7891, 111th Cong. (2009-2010), available at <http://clerk.house.gov/evs/2010/roll607.xml>.

<sup>12</sup> Resp. at 3.

1 respondents state that NLP provided information to investigators.<sup>13</sup> In addition, respondents  
2 assert that counsel was contacted at one point in time by federal prosecutors who indicated that  
3 they might be preparing to conduct an investigation of matters relating to the Ethics Committee  
4 investigation.<sup>14</sup>

5 As shown in the chart below, between October 1, 2008, and August 16, 2010, RFC paid  
6 legal fees totaling \$1,669,725 to two law firms — Orrick, Herrington & Sutcliffe LLP (“Orrick”)  
7 and Zuckerman, Spaeder LLP (“Zuckerman”) — for legal representation in connection with the  
8 House Ethics Committee’s proceedings.

RFC Payments for Legal Services			
Year	Law Firm	Committee	Amount
2008	Orrick, Herrington & Sutcliffe	Rangel for Congress	\$ 121,436.63
2009	Orrick, Herrington & Sutcliffe	Rangel for Congress	\$ 100,000.00
	Zuckerman Spaeder	Rangel for Congress	\$1,166,288.58
2010	Zuckerman Spaeder	Rangel for Congress	\$ 282,000.00
		<b>TOTAL</b>	<b>\$1,669,725.00</b>

9  
10 As shown in the chart below, between January 5, 2009 and September 14, 2010, NLP  
11 also paid a total of \$393,000 to Orrick and Zuckerman for legal representation in connection with  
12 the House Ethics investigation.

NLP Payments for Legal Services			
Year	Law Firm	Committee	Amount
2009	Orrick, Herrington & Sutcliffe	National Leadership PAC	\$100,000.00
2010	Zuckerman Spaeder	National Leadership PAC	\$293,000.00
		<b>TOTAL</b>	<b>\$393,000.00</b>

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

1 In the same time period that the Ethics Committee was investigating Rangel, the  
2 Commission was considering and later investigating MUR 6040, concerning the Lenox Terrace  
3 matter, in which NLP, RFC, and Rangel were respondents. Oldaker, Belair & Wittie  
4 ("Oldaker") represented the parties in MUR 6040.<sup>15</sup> As respondents, NLP, RFC, and Rangel  
5 responded to notifications and discovery requests.<sup>16</sup> After an extensive investigation, these  
6 respondents ultimately entered into a conciliation agreement with the Commission on March 23,  
7 2012, in which they paid a civil penalty and admitted they violated 2 U.S.C. § 441a(f) (now  
8 52 U.S.C. § 30166(f)) by accepting excessive contributions from a landlord that provided them  
9 office space "at a charge that is less than the usual and normal charge for such" facilities.<sup>17</sup>

10 **B. Legal Analysis**

11 The complaint alleges that NLP, Rangel, and RFC each violated the Act when NLP paid  
12 for legal services provided to Rangel and RFC and failed to report the payments as in-kind  
13 contributions.<sup>18</sup> The complaint's allegations are premised on a presumption that NLP must have  
14 paid for the RFC's legal fees in light of the amount of fees paid by NLP relative to NLP's role in  
15 the House Ethics investigation. Respondents deny the complaint's allegations, asserting that the  
16 allegations are speculative and that the legal fees paid by NLP were exclusively for legal services  
17 provided to NLP,<sup>19</sup> and the available evidence establishes that NLP incurred its own legal  
18 expenses. While the response does not provide specific details about the dates that NLP retained

<sup>15</sup> See Charles B. Rangel Designation of Counsel (Mar. 11, 2009).

<sup>16</sup> See, e.g., MUR 6040 (Rangel, *et al.*), RTB Resp. (MUR 6040).

<sup>17</sup> MUR 6040 (Rangel, *et al.*), Conciliation Agreement ¶¶ IV.12 & V.

<sup>18</sup> Compl. at 4, 6.

<sup>19</sup> Resp. at 1.

1 the firm, the length of the engagement or the specific tasks completed, there is no available  
2 information to support the complaint's allegations. Under these circumstances, the Commission  
3 concludes that further enforcement action would not be an efficient use of the Commission's  
4 resources and exercises its prosecutorial discretion to dismiss the matter.

5 Under the Act, NLP may make contributions to candidates up to \$5,000 per election.<sup>20</sup> A  
6 contribution includes any gift, subscription, loan, advance, or deposit of money or anything of  
7 value, including "in-kind contributions," made by any person for the purpose of influencing a  
8 federal election.<sup>21</sup> Leadership PACs are not allowed to provide support to the Federal candidate  
9 or officeholder with whom they are associated in amounts different than those available to other  
10 similar committees.<sup>22</sup> To the extent that a leadership PAC is used to pay for costs that could and  
11 should otherwise be paid for by a candidate's authorized committee, such payments are in-kind  
12 contributions, subject to the Act's contribution limits and reporting requirements.<sup>23</sup> Thus, if NLP  
13 paid for legal services that were actually provided to the Rangel Committee and the payments  
14 exceed \$5,000, NLP violated 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a(a)(2)(A)) by making  
15 an excessive in-kind contribution to RFC and Rangel, and Rangel and RFC violated 52 U.S.C.  
16 § 30116(f) (formerly 2 U.S.C. § 441a(f)) by knowingly accepting contributions in excess of the

<sup>20</sup> 52 U.S.C. § 30116(a)(2)(A) (formerly 2 U.S.C. § 441a(a)(2)(A)); 11 C.F.R. § 110.1(d) (setting a \$5,000 per election contribution limit for unauthorized multicandidate committees).

<sup>21</sup> 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)), 11 C.F.R. § 100.52(d)(1). *See* 52 U.S.C. § 30101(8) (formerly 2 U.S.C. § 431(8)) (defining contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office" or "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose").

<sup>22</sup> *See* Final Rule and Explanation and Justification, Leadership PACs, 68 Fed. Reg. 67,013, 67,016 (Dec. 1, 2003).

<sup>23</sup> *Id.* at 67,017. *See e.g.* MUR 5181 (Ashcroft) (the acceptance by an authorized committee of a fundraising mailing list developed by the candidate's leadership PAC constituted an excessive in-kind contribution).

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1 Act's limits.<sup>24</sup> Further, the Act requires that all political committees file reports disclosing all  
2 contributions made and received, and thus to the extent that any in-kind contributions from NLP  
3 to the Rangel Committee were not reported by either committee, each committee would have  
4 violated the Act's reporting requirements.<sup>25</sup>

5 In this matter, the complaint alleges that NLP's payments of \$393,000 for legal fees  
6 benefitted the Rangel Committee. Specifically, the complaint argues that "[t]he fact that the  
7 [NLP] paid \$293,000 to Rangel's principal law firm in 2010 compared to the smaller amount of  
8 \$282,000 paid to the same law firm by Rangel for Congress in the same year is a key fact in  
9 demonstrating that Rangel improperly paid his law firm in a major way throughout 2010."<sup>26</sup>  
10 The complaint argues that NLP's payments could not have been solely for its own legal expenses  
11 because NLP was implicated in only one of 13 House Ethics allegations and only 7 of 273  
12 numbered paragraphs of the Statement of Alleged Violation issued by the Ethics Committee, it  
13 had too small a role in the investigation to generate such large legal fees, and the House Ethics  
14 Committee had no jurisdiction over NLP and was unable to impose any sanctions or penalties on  
15 it.<sup>27</sup> Thus, the complaint deems NLP's payments in 2009 to Orrick as "extremely out of  
16 proportion," and its 2010 payments to Zuckerman as "wildly out of proportion."<sup>28</sup> The  
17 complaint further suggests that RFC's financial pressures during the election year of 2010 caused

<sup>24</sup> NLP did not disclose making any direct or in-kind contributions to the Rangel Committee during the 2010 election cycle, nor did the Rangel Committee report receiving any contributions from NLP.

<sup>25</sup> 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)). In-kind contributions must be reported as both contributions received and expenditures made. 11 C.F.R. §§ 104.3(b), 104.13(a)(2).

<sup>26</sup> Compl. at 4.

<sup>27</sup> *Id.* at 7-8.

<sup>28</sup> *Id.* at 8.

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1 Rangel to turn to NLP that year to pay \$293,000 in legal fees owed Zuckerman.<sup>29</sup> The complaint  
2 thus presumes that at least some part of the services paid for by NLP must have been for legal  
3 services actually provided to Rangel and his authorized Committee.<sup>30</sup>

4 In a single joint response, respondents deny the allegations in the complaint. They assert  
5 that "the legal fees paid by NLP were for legal services [NLP] incurred on its own behalf relating  
6 to the House Ethics Committee investigation, other ongoing legal proceedings and generally  
7 heightened compliance efforts."<sup>31</sup> According to the response, "the intense scrutiny to which Mr.  
8 Rangel has been subjected since 2008 has required a higher level of legal review, and this has  
9 resulted in additional legal compliance costs for NLP."<sup>32</sup> "NLP, in particular, incurred  
10 significant legal expenses because it shared campaign staff and office space with RFC, and Mr.  
11 Rangel's close association with NLP required it to frequently conduct due diligence in order to  
12 provide comprehensive responses to investigators questions as well as questions posed by Mr.  
13 Rangel and RFC."<sup>33</sup>

14 The response specifically points to MUR 6040 and a Department of Justice investigation  
15 relating to Rangel's travel to the Carib News Foundation's business conferences — for which  
16 NLP was required to provide information to Department of Justice investigators — as other

<sup>29</sup> *Id.* at 9. The complaint also acknowledges that Oldaker has provided legal services to both committees, but states that because NLP paid legal fees to Oldaker during the pendency of the House Ethics Committee investigation, it is "likely" that a portion of those disbursements were also "improper." Compl. at 5.

<sup>30</sup> *Id.*

<sup>31</sup> Resp. at 4. This denial is consistent with a statement reportedly made by a Rangel spokesman regarding the \$100,000 payment that NLP made to Orrick in 2009: "the complaint references a news article published approximately four months after NLP reported its \$100,000 payment to Orrick (and prior to any disbursements to Zuckerman) which states: 'It was not for a personal matter,' Rangel spokesman Emile Milne said in an email to POLITICO. 'The \$100,000 paid to the law firm of Orrick, Herrington & Sutcliffe, LLP was for legal services the firm provided to National Leadership PAC ('NLP') in relation to inquiries concerning NLP's office space in New York.'" Compl. at 7.

<sup>32</sup> Resp. at 2-3.

1 concurrent matters for which NLP had obligations and interests.<sup>34</sup> And the available information  
2 establishes that NLP had ongoing obligations due to its status as a witness in ongoing legal  
3 proceedings. Documents released by the House Ethics Committee corroborate that NLP incurred  
4 its own legal expenses in connection with the inquiry into the Lenox Terrace matter, and they  
5 also show that the leadership PAC may have required legal representation in association with the  
6 government's investigation of the Carib News Foundation.<sup>35</sup>

7 Under all of the circumstances, the Commission concludes that further enforcement  
8 action would be an inefficient use of the Commission's resources. Therefore, we exercise our  
9 prosecutorial discretion to dismiss this matter.<sup>36</sup>

<sup>34</sup> *Id.*

<sup>35</sup> See Carib News Report, at Appendix D.

<sup>36</sup> The Commission's *Statement of Policy Regarding Commission Action in matters at the Initial Stage of the Enforcement Process* states that the Commission will dismiss a matter pursuant to its prosecutorial discretion "when the matter does not merit further use of Commission resources, due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation." 72 Fed. Reg. 12,546 (March 16, 2007).